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May 23, 2016

VIA ELECTRONIC FILING
Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: In the Matter of Expanding Consumers' Video Navigation Choices; Commercial Availability of Navigation Devices (MB Docket No. 16-42; CS Docket No. 97-80).

Dear Ms. Dortch:

On April 19, 2016, T-Mobile USA, Inc.[1] filed reply comments in response to the FCC's Video Programming Diversity Notice of Inquiry.[2] By this letter, T-Mobile welcomes the opportunity to affiliate its Video Programming Diversity reply comments with the above-referenced proceeding and thus submits this enclosed filing to supplement the record.

In short, we think it is reasonable for the FCC to examine the set top box issue and its effect on the development of competition and diversity. Further, we call attention to the other video content issues raised by our comments as well.

Sincerely,

/s/ Shellie Blakeney
Shellie Blakeney
Principal Corporate Counsel
Federal Regulatory Affairs

Enclosure

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1 T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company.

2 *See* T-Mobile Reply Comments, *Matter of Promoting the Availability of Diverse and Independent Sources of Video Programming*, Notice of Inquiry, FCC No. 16-19, MB Docket No. 16-41 (rel. Feb. 18, 2016).

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Promoting the Availability of Diverse and Independent Sources of Video Programming	)	MB Docket No. 16-41

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA Inc. ("T-Mobile")[1] welcomes the opportunity to submit these reply comments in response to the Federal Communications Commission's Video Programming Diversity Notice of Inquiry released on February 18, 2016.

I. INTRODUCTION

T-Mobile offers nationwide wireless voice, text, and data services to approximately 63 million subscribers.[2] T-Mobile continues to lead growth in the wireless industry, with more than 8 million net customers added in 2015 alone,[3] and its network expansion is progressing at an accelerated pace. The footprint for T-Mobile's 4G Long-Term Evolution ("LTE") network—the Nation's fastest 4G LTE network—more than doubled during 2015, expanding its reach to 304

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[1] T-Mobile USA, Inc. is a wholly-owned subsidiary of T-Mobile US, Inc., a publicly traded company. T-Mobile, as used in these comments, refers collectively to T-Mobile and the MetroPCS brand.

[2] *See* T-Mobile News Release, *T-Mobile Adds Over 8 Million Customers for Second Consecutive Year* (Jan. 6, 2016), https://newsroom.t-mobile.com/news-and-blogs/t-mobile-adds-over-8-million-customers-for-second-consecutive-year.htm.

[3] *See id.*

million Americans.[4] T-Mobile has achieved this success by disrupting the traditional mobile broadband marketplace through innovative and consumer-friendly offers that has forced its competitors to follow its pro-consumer moves.[5]

T-Mobile is submitting these reply comments because, from its perspective, mobile video is the next frontier for mobile broadband disruption. More and more, customers are demanding access to video programming on an "any time, any place" basis, and their viewing of video is transitioning to the Internet, and, increasingly, to their mobile devices. Indeed, mobile video is now the number one way people use their mobile data—up 145% in the last two years from 0.66GB to 1.62GB—and mobile data usage is projected to increase more than 400% by 2020.[6] To help meet these demands, T-Mobile recently launched Binge On—a program that allows its wireless subscribers to stream video programming from participating content providers without incurring the usage counting against their high speed data.[7]

Binge On addresses customers' growing demand for mobile video and is fueling an unprecedented increase in video consumption on T-Mobile's network. While other providers have profited from the increase in video consumption through overage charges and higher data fees, customers participating in Binge On receive video streaming at a bit rate appropriate for a handheld device and do not have the usage count against their high speed data. Through proprietary new adaptive video technology, customers can stretch their data and watch video up

4 *See id.*

5 *See id.*

6 *See* T-Mobile Media Kit, *T-Mobile Unleashes Mobile Video with Binge On* (Nov. 10, 2015), https://newsroom.t-mobile.com/media-kits/un-carrier-x.htm.

7 *Id.*

to three times longer at DVD quality or better.[8] Both customers and content providers are benefitting from Binge On. Customers are watching two times more per day than before and have streamed over 190 million hours of video for free. Since the launch of Binge-On, T-Mobile has zero rated more than 57 million GB (57 petabytes) of traffic. One video provider has seen the number of active viewers spike 90% and watch times nearly triple from customers with limited high-speed data. Binge On represents T-Mobile's initial foray into the video marketplace and shows that it can bring innovation and disruption to this industry segment too if it is not blocked by industry practices that discourage entry and meaningful competition.

T-Mobile continues to seek ways to enhance consumers' access to video programming, and it shares the concerns of the Commission and many commenters that certain historic carriage practices may serve to inhibit both the Commission's goal of "foster[ing] a diverse, robust, and competitive marketplace for the delivery of multichannel video programming,"[9] and the ability of T-Mobile and other disruptors to create and offer the new and innovative video programming services that its customers want and demand.

In particular, and as discussed more fully below, T-Mobile believes that the following areas are worthy of additional Commission review: (1) most favored nations ("MFN") and alternative distribution method ("ADM") provisions that make it difficult for mobile and over-the-top ("OTT") providers to gain access to programming; (2) program bundling practices that serve to require distributors to take and package program services that consumers do not want; (3) the difficulty that new entrants face in obtaining access to video programming at rates that

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8 Customers on qualifying plans can watch unlimited YouTube, Netflix, HBO, Hulu, Dailymotion, EPIX, Nickelodeon, Spike, TV Land, and others—more than 60 services now streaming free on eligible rate plans. These services represent 70% of all video T-Mobile customers watch on their phones and tablets each month.

9 *Promoting the Availability of Diverse and Independent Sources of Independent Programming*, Notice of Inquiry, FCC No. 16-19, MB Docket No. 16-41 (rel. Feb. 18, 2016) ("NOI") ¶ 2.

will allow them to compete with larger providers; and (4) the impact that set-top boxes have on competition and diversity. T-Mobile urges the Commission to review whether historic practices present impediments to consumers' ability to access the video programming content that they want over the devices that they choose.

II. COMMENTERS REFERENCE SEVERAL PRACTICES THAT RAISE POTENTIAL CONCERNS FOR VIDEO PROGRAMMING DISTRIBUTORS, PROGRAMMERS AND, ULTIMATELY, CONSUMERS.

A. The Commission should be concerned that MFN provisions inhibit diversity and the development of competition in the video distribution marketplace.

Many commenters urge the Commission to take a closer look at MFN provisions, which allow a multichannel video programming distributor ("MVPD") to "incorporate more favorable rates, contract terms, or conditions" that a programmer subsequently offers to a different programming distributor.[10] The comments indicate that MFN provisions are particularly prevalent in carriage agreements between larger MVPDs and programmers, and many programmers have expressed concern that these provisions often inhibit their ability to craft carriage deals, particularly with new or smaller distributors.[11] These commenters assert that MFNs often are "unrelated to their contractually committed distribution,"[12] and the American Cable Association believes that MFNs often hinder the ability of small cable operators to offer diverse programming because independent programmers are unable to agree to terms they

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10 NOI ¶ 5.

11 *See, e.g.*, Comments of RFD-TV at 21 ("[M]ost favored nation provisions, particularly those governing price, prevent RFD-TV from engaging in creative deal-making with new distributors and establish a ceiling on RFD-TV's ability to grow its affiliate revenues."); Comments of Herring Networks, Inc. at 3 ("Independent networks are often forced to accept broad MFN language. Such provisions can . . . lead to a chipping away of revenue and distribution."); Comments of INSP, LLC at 20 ("MFNs discourage independent programmers from introducing innovative new non-price terms.").

12 Comments of KSE Media Ventures, LLC at 2.

otherwise would have accepted because of a MFN with a large MVPD.[13] Thus, the developing record indicates that a closer look is warranted to ensure that MFNs do not serve to prevent new entrants from gaining access to a variety of diverse programming sources.

Of particular concern to commenters are MFNs that allow the MVPD to "cherry-pick" specific terms that may be given to over-the-top ("OTT") and other competitive video distributors, even if the MVPD's agreement is, on the whole, more favorable than that of the competitive distributor.[14] As some commenters discussed, "cherry-picker" MFNs "limit[] the ability of small independent programmers to obtain broad access."[15] This practice, if left unaddressed, could restrict consumers' ability to access diverse content from the provider of their choice.

Because of the concerns that have been raised in the docket, further consideration by the Commission of the costs and benefits of these provisions, especially with respect to the possibility that they inhibit the development of competition and innovation in the video marketplace, appears warranted.

B. Commenters also question the competitive impact of ADM provisions.

Several commenters have also raised questions about Alternative Distribution Method ("ADM") provisions, which may serve to "restrict a programmer's ability to distribute its programming via an alternate platform."[16] As a new entrant in the video programming distribution marketplace, T-Mobile is concerned with provisions that may interfere with its

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13 Comments of the American Cable Association at 33-34.

14 *See* Comments of TheBlaze Inc. at 5 ("Increasingly, MVPDs demand 'unconditional MFNs' and 'cherry picker MFNs', disproportionately so from independent networks.").

15 Comments of the Hispanic Information and Telecommunications Network, Inc. ("HITN") at 5.

16 NOI ¶ 10.

ability to provide innovative video programming services to its customers.

According to many commenters, ADM provisions are often drafted in very broad terms that inhibit a programmer's ability to provide its service "over-the-top" and through other emerging distribution platforms. Some commenters view ADMs as "lose only" propositions because they are not limited in scope, are increasingly complex, contain excessively long time window restrictions, and serve to restrict OTT distribution.[17] The identified concerns do not appear to be isolated or unique—typically more than one type of restriction is present in an ADM provision. HITN expresses concern that significant time window delays affect the ability of independent programmers to provide consumers with timely access to programming via OTT distribution.[18] Other commenters have stated that ADMs that specifically prohibit Internet distribution are of particular concern.[19] These commenters suggest that, if not adequately examined and addressed, ADM provisions could be detrimental to program diversity and the development of competition in the video programming marketplace.

Again, T-Mobile recommends that the Commission assess further the impact of ADM provisions on program diversity and competition.

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17 Comments of INSP, LLC at 25.

18 Comments of HITN at 5 ("ADMs generally restrict internet distribution for twelve (12) to eighteen (18) months from the date of cable distribution. Because programming is often topical or contextual, such delays largely reduce the likelihood of later distribution on internet based OTT platforms.").

19 Comments of beIN Sports at 2; *see also* Comments of RFD-TV at 21("Alternative distribution method clauses restrict RFD-TV's ability to be carried by over-the-top distributors. These clauses prevent RFD-TV from distributing its content online to those viewers that have access to broadband."); Comments of Aspire Channel, LLC, and Up Entertainment, LLC at 4-5 ("The combination of [MFN and ADM provisions], as a practical matter, severely limits or precludes the distribution of independent programming to alternative media such as OTT distributors."). Comcast, on the other hand, claims that ADMs today are not generally so restrictive. Comments of Comcast at 31 ("[O]verly restrictive ADMs—the kind that prevented any Internet exhibition—are largely a thing of the past.").

C. The Commission should assess the impact of program bundling requirements on program diversity and the ability to offer consumers the programming that they want.

Many commenters also note that program bundling practices inhibit a distributor's ability to offer consumers the flexible programming options that they increasingly demand and restrict their ability to offer more diverse, independent programming.[20] Among other things, commenters complain that distributors are often required to carry programming services that neither they nor their customers want in order to gain access to the desired programming.[21] These commenters argue that many programmers require distributors "to purchase bundles of programming that neither they nor its subscribers want" and the distributor "is required to deliver those services to many more subscribers than those who watch or desire to watch that content."[22] Research indicates that most subscribers watch only seventeen channels and thus often feel that they overpay for bundled video programming.[23] In addition, the comments describe programmer practices, including penetration, "neighborhooding," and other carriage requirements that limit a distributor's ability to offer programming in packages that consumers' increasingly seek.[24] T-Mobile is concerned with program bundling practices that might limit its ability to offer innovative program services tailored to what customers really want, and, again, urges the

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20 *See* Comments of the American Cable Association at 18, 22.

21 *See* Comments of ITTA at 15 ("[P]rogram bundling requirements inhibit our ability to [offer more diverse programming] by forcing us to pay for and devote channel capacity to programming neither we nor our consumers want.").

22 Comments of AT&T at 11-12; *see* Comments of Aspire Channel, LLC and Up Entertainment, LLC at 2 ("The bundling practices of large programmers limit distribution of independent programming services.").

23 Cecilia Kang, *Cable Forces More Channels Down Unwilling Viewers' Throats*, The Washington Post (May 7, 2014), https://www.washingtonpost.com/news/the-switch/wp/2014/05/07/cables-forced-bundles-are-getting-fatter-but-no-one-is-watching-more-channels/.

24 *See* Comments of the American Cable Association at 26.

Commission to give thoughtful consideration to the impact of these types of bundling practices on consumers and the development of diversity and competition.

D. The record indicates that new entrants face challenges obtaining access to video programming at competitive rates.

Several commenters also express concern about their inability to gain access to programming on "economically reasonable" terms and conditions, which limits their ability to offer consumers competitive choices.[25] On average, new entrants in the marketplace pay significantly more for access to programming in comparison to large distributors that have, historically, received reduced rates. T-Mobile believes that the Commission should assess whether new entrants to the video marketplace are unable to gain access to programming on terms that will allow them to compete effectively with larger distributors and, if not, the impact on competition and diversity.

E. T-Mobile supports further study of set-top boxes.

Some commenters also urge the Commission to examine closely the existing set-top box marketplace and its effect on the development of competition and diversity.[26] They argue that inherent issues with set-top boxes, such as system carriage and channel lineup, may adversely affect disruptors in the video programming marketplace.[27] T-Mobile is aware that the Commission has a separate rulemaking proceeding that is looking at these issues and urges the Commission to consider how set-top boxes might impact the offering of innovative new services.

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25 *See* Comments of Verizon at 7.

26 *See* Comments of the Writers Guild of America at 17; Comments of the Townsend Group at 1.

27 Comments of the Townsend Group at 1.

III. CONCLUSION

In sum, the comments in this proceeding provide sufficient cause for concern that warrant a closer assessment of whether current practices in the video distribution marketplace may serve to restrict the ability of emerging competitors to provide consumers with a variety of new, innovative programming options.

Respectfully submitted,

/s/ Kathleen O'Brien Ham
Kathleen O'Brien Ham
Cathleen Massey
Shellie Blakeney
T-MOBILE USA, INC.
601 Pennsylvania Ave., NW
Washington, DC 20004
(202) 654-5900

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